SERIES.

G.O. No.

Dated

[Despatch Abstract]

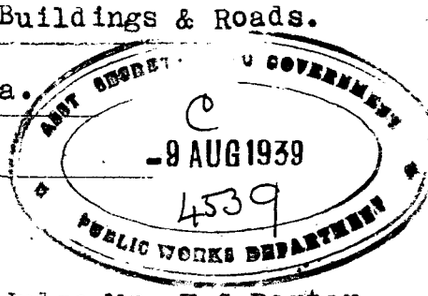
C.F. ENDORSEMENT

~~PROCEEDINGS~~ ~~MEMORANDUM~~ OF THE Chief Engineer, P.W.D. General, Buildings & Roads.

Post Box No. 410 *Telegraphic Address* Quyadamica.

Name H.R. Dogra, Esq., B.Sc.

No. 2112 Ac. 39-1, *dated* 5th August 1939. 19



Short title Arrears of rent etc., from the District Judge Mr. E.G.Barter I.C.S.

READ—the following :—

From the Executive Engineer, Bellary Division, No.969SE/ M.F.61 dated 11th July 1939 to the Superintending Engineer, Bellary Circle.

Mr. E. G. Barter, I.C.S., District Judge joined duty at Bellary on 28-1-39. He however paid rent only for 31-1-39 and stated that he occupied the quarters on 30-1-39 A.N. But the Treasury Deputy Collector, Nellore reported that rent for the period 1st to 27th alone was recovered from the pay bill of Mr. Mack; when requested to pay rent due for 28th to 30th of January 1939, Mr. Barter contends that Mr. Mack did not vacate the building as soon as he handed over charge of the office and that therefore the rent for the period 28th to 30th is legitimately payable by that officer and not by him. In spite of 2 or 3 letters he refuses to be convinced that the officer who holds the post is responsible for the rent for the quarters attached to the post and requires the orders of Government on the case.

I therefore request you to kindly take further action in the matter.

Copies of correspondence with Messrs. Barter and Mack are hrewith enclosed for favour of perusal.

ENDORSEMENT No. 1923 G/352-I.I.Part II dated 21/27th July 1939 from the Superintending Engineer, Bellary Circle to the Chief Engineer, P.W.D. General, Buildins & Roads.

Copy together with copies of his correspondence with

with Messrs. Barter and Mack on the above subject is herewith forwarded to the Chief Engineer, P.W.D; General, Buildings and Roads, Madras.

From the nature of [illegible] evident that neither of the officers is amenable to a compromise as regards the liability for rent due to Government from 28th to 30th January 1939 in respect of the above residence.

With reference to the subsidiary rule 5 under F,R.45 there is no doubt that Mr. Barter is responsible for payment of rent for this period since he assumed charge of the office as the District Judge, Bellary on 28-1-39. The fact that Mr. Mack continued to occupy the quarters from 28th to 30th January 1939, after handing over charge of his office, is purely a matter for private and mutual arrangement between the two officers and Mr. Barter cannot therefore disown his liability for the rent for this period. Mr. Barter questions Mr. Mack's statement that he had to hand over (charge) without notice and points out that he left a note on record when he left the station that he would join on the 28th F.N. if he returned to the station. This note or his instructions to the Sherishtadar appear to be not binding on Mr. Mack unless he received orders of High Court or Government posting Mr. Barter to the station.

As Mr. Barter still insists on a definite ruling of Government being obtained in the matter necessary action may kindly be taken and the responsibility for rent fixed.

I am sorry that these two high District Officials of Government should have made it necessary to report to Government this case which is clear and which does not require any fresh ruling and this would mean unnecessary and avoidable delay, in effecting recovery of rent from these Officers. Mr.

Mr. Barter

Mr. Barter appears to suggest that the Executive Engi-
ɜer in charge of the building should take forcible pos-
ɜssion of a building from an officer just relieved of his
ɪties on transfer and give physical possession of the
ɪilding to his successor. This I suggest should be hardly
ɜcessary with good will between colleagues.

Submitted to Government for favour of orders, as to
ɪich officer has to pay rent for the quarters in question
ɔr the period 28th to 30th January 1939.

C. Rajagopalachari
8-8-39

for Chief Engineer, P.W,D,

6
8.8.39

the Secretary to Government,
Public Works Department with enclosures.

S./7-8-39.

ENCLOSURES.

Copy of letter No.488-M/M.F. 61, dated 14th March 1939 from the Executive Engineer, Bellary Division to the District Judge, Bellary.

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Dt. Judge's quarters - Bellary - Rent for January 1939.

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A sum of Rs.177-2-0 and Rs.39-4-0 is due from E.E.Mack Esq., Dt. Judge on account of rent of Judge's residence and Service Tax for his occupation of the residence from 1 to 30th January 1939.

.....

A sum of Rs.5-14-0 towards rent and Rs.1-5-0 towar Service tax is due from you for your occupation of the residence, on 31-1-39 and I request that the amounts may please be arranged to be recovered and remitted into Treasury and if already recovered, reference to the amount of bill, date and place of encashment of the bill &c., wherein the recovery was effected may kindly be intimated to me.

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Copy of letter No.1983 dated 30th March 1939 E.E.Mack, Esq., Dt. Judge, Nellore to the Executive Engineer, Bellary.

.....

Subject:- Dt. Judge's residence, Bellary - Rent and taxes - Your letter No.584-M., dated 27th March 1939.

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I regret that I am not liable to Government for any rent of the District Judge's residence, ~~Bakka~~ Bellary after I handed over charge as District Judge to Mr.Barter on the afternoon of 27th Janu ry 1939. I request you to kindly refer to him for payment of all ~~rmkxb~~ rent

rent and taxes between 27th January 1939 and 31st January

Endoresement No.678-M., dated 10th April 1939 (on the

*****

Copy forwarded to E.G.Barter, Esq. District Judge, Bellary for information. The amount of rent and service taxes due for 28th to 30th January 1939 i.e. Rs.17-12-0 and Rs.3-15-0 respectively may kindly be arranged to be remitted early.

L. Venkatakrishna Ayyar
Superintending Engineer-in-c
Bellary Division.

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Copy of letter No.2138 dated 12th April 1939 from the District Judge, Bellary, to the Executive Engineer, Bellary.

....

Subject:- Dt. Judge's residence - Bellary - Rent and taxes - Your Endorsement No.678-M., dated 10th April 1939.

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The amount is trifling but an important matter of principle is raised by Mr. Mack's view that because he has handed over charge of the office he is not liable to pay rent on the Government residence for the period during which he afterwards continued to occupy it to the exclusion of his successor. Your demand apparently means that you are prepared to accept this view.

Rent is a liability arising from the possession of a Government Residence and not a liability attaching to an appointment. Fundamental Rule 45(5) implies liability during the tenure of office, but that presupposes that the bungalow is made available to the incumbent from

the time he takes over charge, and is given up by him when his office ceases. It has no reference to the case of an officer remaining in exclusive possession after he has handed over charge, or of an officer who on account of any such reason beyond his control is prevented from getting possession of the bungalow when he takes over charge. To assert that even in those circumstances an Officer is liable to rent as soon as he takes charge of his office, even though the bungalow is not available for him, and that the officer who retains the Bungalow after handing over charge is not liable for rent, would be an invitation to any officer who so desire to spend joining time, leave or even retirement, rent free at the expense of his successor, whose only redress would be to take proceedings in a Civil Court, not only to recover rent, but even to recover possession of the Bungalow.

I submit that Government cannot divest itself of the responsibility for making the bungalow immediately available to the officer holding the office to which it is attached, and that Government is in the same position as any other landlord, who has no claim for rent from a tenant to whom the bungalow has not been made available, and who is entitled to recover rent from a tenant who holds over after his right of occupation ceases.

If you can find no rule or order to cover this case, I would suggest you submit the matter to Government and obtain a ruling as to which officer is liable in these circumstances to pay the rent.

---- IV

Endorsement No.734-M., dated 21-4-39 (on the above).

.....

Copy forwarded to Mr.E.E.Mack, District Judge, Nellore

Nellore for favour of remarks.

The date when you actually vacated and handed over the residence to your successor may please be stated. If facts are as stated by Mr. Barter and that you actually vacated the house only on 30th January 1939 Afternoon, it is but reasonable that you ~~handed over~~ pay the rents for the period 28 & 30 31-1-39 A.N, through you handed over charge of the office of District Judge on 27th January 1939 afternoon.

L. Venkatakrishna Ayyar,
Superintending Engineer-incharge
Bellary Division.

V

Copy of letter dated 2nd May 1939 from E.E.Mack, Esq., I.C.S., District Judge, Nellore to the Executive Engineer, Bellary Division.

****

Reference:- District Judge's Residence - Bellary -
Rent and taxes unpaid by Mr. Barter -
Your Endorsement No.734-M., dated 21-4-1939.

*****

Mr. Barter's letter to you dated 12th April copy Enc. III hp.: of which you have forwarded to me for remarks, suggests that I persisted in occupying the bungalow to his exclusion after handing over charge to him on the forenoon of Saturday the 28th January. This is far from being the case.

Mr. Barter suddenly arrived at my bungalow shortly before 11 A.M. on the 28th January without any previous intimation to me and wanted to take over charge. A letter he had posted to me from somewhere in France reached me after his arrival. His leave accordingly to our Civil list did not expire till the 29th January. He had previously written to Mr.Wilkes, D.I.G., to

1A

put

put him up for a day or two whether he was posted back to Bellary or not. Mr. Wilkes was in camp but had instructed his butler to accommodate Mr. Barter when he did arrive. It was quite impossible as I pointed out to Mr. Barter to hand over charge at an hour's notice. Most of our effects were crated, but there was a deal of final packing to be done and I also had a judgment pending. Mr. Barter urged however that he would be on half pay till he took over charge and would lose about Rs.50/- a day. He said I could finish my packing and vacate the bungalow at my convenience. I was persuaded into obliging him though at inconsiderable inconvenience to ourselves and at the sacrifice of three days joining time spent in hurried packing. Our effects could not be loaded for transit till the Monday and our presence in the bungalow till then was absolutely necessary. Had Mr. Barter even suggested that I should pay the rent till he chose to enter into occupation I should certainly have declined to hand over charge till Monday or Tuesday. There was in fact nothing to prevent Mr. Barter entering into the vacated portions of that large bungalow on the Sunday or Monday. My occupation of the Bungalow - if it can be called this - after handing over charge was therefore at Mr. Barter's pressing invitation to enable him to take over charge and save himself loss of pay. Any stipulation regarding payment of rent after taking over charge should have come from him at the time. He has not even written to me about this rent. In any event I fail to see how he can now ask Government to collect rent from me in the circumstances subsequent to my handing over charge. Mr. Barter's letter to you has come as a surprise to me and I regret now that I went out of my way to oblige him.

Copy of letter No. 886 M dated 16-5-39 from the Executive Engineer, Bellary Division to the District Judge, Bellary.

Ref:- Your letter 2138 dated 11-4-39.

Sub:- Dt. Judge's residence - Rent and taxes - period 28th to 30-1-39.

On a reference to Mr. Mack he states that he could not vacate the quarters on 28-1-39 on your arrival without notice. I would request you to pay up the rent and taxes for the period 28th to 30-1-39 as the occupation of the quarters by Mr. Mack beyond the date of handing over was a personal matter between you. I am not presuming to advise but it appears to me the Government is hardly likely to revise the general orders on a matter which can be adjusted by goodwill between officers who are collegues in the same department and a reference on the subject would be infractious and not likely to result in any substantial benefit; and after all the amount involved is only about Rs.21/-.

I shall be obliged if you will let me know if necessary rentlist may be sent to the Treasury Officer, so that you may effect the recovery of difference of Rs. 17-12-0 rent and Rs.3-15-0 service taxes.

Copy of letter from E.G. Barter Esq., Dt. Judge, Bellary to the Exec. Engineer, Bellary Dvn. (No. 2723 dated 15th June 1939).

Sub:- Dt. Judge's residence - rent and taxes for the period 28-1-39 to 30-1-39.

Ref:- Your letter No. 886 M dated 16-5-1939.

I have already said that the smallness of the amount

immaterial where a question of principle is involved and I do not agree that this question of principle can be settled by "good will", or even that it is a personal matter between two officers, when one of them outright refuses to vacate a bungalow or to be responsible for the rent during his occupation.

I would prefer to have Government's orders as to whether his position is correct and request you to make the reference on the lines I have already suggested.

In this connection I would like to make it clear that it is not true that I arrived without notice. Even before I went on leave I had left written instructions in the office fixing the morning of 28th as the date of my arrival if I returned to the district, and the Sheristadar received a letter repeating this, a week before I arrived.

P.W.D.

pp.1-10 cf.

(C. No. 4539/C/39) From the C. E. (G. B. R.) Endt. No. 2112. Ac.
39-1 dated 5. 8. 39.

Buildings- Bellary- Dt. Judge's
bungalow- Arrears of rent for
two days- Recovery.

22687

Public (Special) may be requested to put up the papers connected with the posting of Mr. E. G. Barker, I. C. S., and to offer their remarks on the case, in the first instance.

10/8
11/8
1938

Public (Spl)

4539. C. 39.1
11. 8. 39.

ASSISTANT SECRETARY TO GOVT.
11 AUG 1939
CHIEF SECTT.

(B)
16

Pub (Spl) Depn

G.O. No. R 609 Revenue 19.12.38 in which Mr. Barker was posted on return from leave to the Dt. & Sessions Judge, Bellary, is put up.

(F)
Reg.

In G.O. No. R 123 Revenue 17.3.38 Mr. Barker was granted

from the 20th June 1938 — on
average pay for 5 months & 28
days & on half-average pay
for the remaining period.
This leave w.e. ~~was~~ have
expired on 31st January 1939.
Mr Baker however rejoined duty
as Dc Judge, Bellary, on the
28th January 1939. Formal
permission is necessary only
if an officer proposes to return
to duty more than 14 days
before the expiry of his
leave. Mr Baker appears
therefore to have been in
order in rejoining duty on
the 28th January 1939 i.e. 3 days
before the expiry of his leave
As Mr Baker assumed charge
of the office of Dc & Sessions
Judge, Bellary on the 28th Jan
1939, he is technically due
to pay rent for the premises
of the Dc Judge, Bellary, w.e.f.
effect from that date with
reference to Subsidiary Rule
6 under FR 45. The leave

rents and that he was
duly given possession of the
premises by his predecessor,
Mr. E. L. Mack, J.P., while the
afternoon of the 30th January
1939 & as such he is liable
to pay rent for the premises
only ~~from~~ the 31st January 1939
Mr. Mack on the other hand
contends that Mr. Barker
arrived at Bellary on the
28th January 1939 without any
previous intimation to him
& that as Mr. Barker's missing
intimation he handed over
charge on the forenoon of
the same day at considerable
loss and inconvenience, as
Mr. Barker represented that
he and he can half pay while
he took charge & would have
come Rs 500/- a day.

It is submitted that under
the rules as they stand it
would appear that Mr. Barker
is liable to pay rent for
the bungalow from the 28th
January 1939, the date on which

he assumed charge accordingly did not enter into actual possession of the house till 30th January 1939 (A.N.). The formal arrangement by which Mrs Bate allowed Mr. Mack to continue in occupation of the bungalow ~~—~~ until he finished his packing cannot be taken cognizance of by the Court.

Issues.

16839

right to occupy & liability to pay rent for the bungalow vests with the office which Mr. B took over on the 27th ~~March~~ ~~that~~ that date is liable to charges in the bungalow

Mr. Madis contends that he is not liable for rent over the period he was, after the same time that he handed over, vacated & offered to vacate the bungalow. He says there was nothing to prevent Mr. B from occupy-

part of the bungalow. Mr B says that Mr M. refused to vacate.

Mr B's attitude is utterly unreasonable. He arrives at Bellary without notice & expects to take charge at once, without notice, for his friend without leave & no consideration for the interest or convenience of Mr M. He was living with Mr Wilkes & presumably did not pay rent for Mr Wilkes' bungalow

Mr B asked he ordered to pay

HB
16

Public (Sf) no 23687-1
16.8.39

P.W.D.

A draft order is put up.

JB
17/8/39
HB
17/8

Rec
18/8

S

RECEIVED SECRETARY TO GOVT.
16 AUG 1939
4681

Remind for issue

21/8

Is it issued?

Is it issued?

Such cases are not
to encourage

C.F. 16.

DRAFT FOR APPROVAL.

P.W.D

	Date.	Initials.
When received for fair copying ...		
When copied ...		
When examined...		
When signed ...		
When despatched.		

SUBJECT:—

Buildings - Bellary. Dt. Judge's Quarters.
Rent for the period from 28.1.39 to
30.1.39. - Recovery from Mr. E.G. Barter Ics
Ordered.

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO*:—

No. 4539/C/39 From the C.S. (G.B&R) Subs. No. 2112-Ac.; 39-1 dated 5/8/ 1939. C.F.

" _____ " _____ " _____ " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

~~Order~~ ~~Ms.~~ ~~Resolution~~ ~~Rout.~~ No. 2046, dated 21-8- 1939.

As the incumbent of the post of the District Judge, Bellary from 28.1.39 to 30.1.39 Mr. E.G. Barter I.C.S., is the officer responsible for the rent of the Dt. Judge's residence for these three days. The circumstances under which he did not occupy the bungalow during this period have been fully considered. H.E. the Governor, however, considers that there is not sufficient justification to make an exception in this case and directs that the rent of the bungalow for the above period be recovered from

TB
1818
WB
1878

2c
18

To the C. E. (GB & R)

" A. G., Madras

Copy to the Pub. (Spl) Dept.